



Date: January 21, 2014
To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Joel V. Reitzer, Jr., Director, General Services Department
Subject: Presentation – West Ellerbee Creek Trail Phase II Design and Land Acquisition Status Update

Executive Summary

The West Ellerbee Creek stream bed has changed geographically since the original trail easements were acquired and the current restrictions on watershed stream buffers were adopted. These easements are no longer acceptable to build a Federal regulation surface transportation trail. A new design has been completed that shifts the alignment requiring new easements for construction. All approvals necessary for construction have been received, except for public works approval of Section 1 which is currently pending. However, some of the commercial property owners along the creek have stated that they are not interested in selling easements to the City.

After a status update presentation and Q&A at the December 18th Durham Open Space and Trails (DOST) Commission meeting, the Commission passed a motion to submit a resolution to City Council supporting the concept of condemnation. The City is scheduled to receive \$1,081,600.00 of Federal funding for this project as part of the Congestion Mitigation and Air Quality Improvement Program (CMAQ). This funding is subject to Federal real estate acquisition requirements and regulations which may have a substantial impact on the schedule due to additional acquisition oversight and review by North Carolina Department of Transportation (NCDOT).

Recommendation

The General Services Department recommends that the City Council receive a presentation on the West Ellerbee Creek Trail – Phase II project status.

Background

As part of FY 13/14 CIP process, \$75,000 was funded for the acquisition of trail easements necessary for construction of the West Ellerbe Creek Trail project as currently designed. The original right-of-way (ROW) acquired for the trail in the 1980's and 1990's has proven to be inadequate for the trail given the movement of the stream itself and increased watershed stream buffer regulations. The project is at 100% design and has received all approvals necessary for construction, except for public works approval of Section 1, which is currently pending.

General Services is requesting \$520,000.00 for FY14/15 in order to provide the required 20% match contribution to the CMAQ funding for construction, as well as pay for traffic signals, additional professional services for support during Federal approval processes and construction administration.

In order to proceed with construction, easements must be obtained from the following property owners:

North Pointe Development Associates, L.P. - (Bed Bath & Beyond shopping center)

North Pointe-CGL, LLC - (Costco)

These properties are part of a Real Estate Investment Trust (REIT). The property owners have declined to enter into any further discussions regarding the sale of the necessary easements to complete the trail. The Bouwfonds residential community (Bouwfonds North Pointe, LP) has agreed to donate the trail easement provided that the City covers legal fees. The City is waiting for Bouwfonds to return the easement option provided by the City to them in November.

General Services did not originally consider using eminent domain to acquire the easements, but instead pursued the development of an alternate route for this section of greenway. General Services and Stewart Engineering presented a status update and overview of the alternative route (including a cost comparison) at the December 18th DOST Commission meeting. The alternative which was presented to DOST is in the conceptual stage only and will need further research and design. At the meeting, a discussion of the use of eminent domain ensued and staff answered questions about the potential to pursue this method to acquire easements for the original trail alignment. DOST inquired as to whether or not the City had ever supported or used condemnation in association with trail construction. After researching the question, it was eventually confirmed for DOST that condemnation was used by the City to acquire a small portion of land in 2009 necessary for the construction of the American Tobacco Trail. Further, in 1997, the City Council passed a resolution supporting the consideration of the use of condemnation for acquiring easements for trail construction. DOST adopted a resolution urging the City Council to support the use of condemnation if all other efforts to acquire the easements fail. The Commission also felt that they would be in support of the alternative route presented by the consultant if that was necessary as an interim route.

The City is scheduled to receive \$1,081,000.00 of Federal funding for the West Ellerbe Creek project as part of the CMAQ Improvement Program which was implemented to support surface transportation projects and other related efforts that contribute air quality improvements and provide congestion relief. Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, commonly called the Uniform Act, is the primary law for acquisition and relocation activities on Federal or federally assisted projects and programs. The Uniform Act is incorporated by reference in North Carolina General Statutes and compliance guidelines are found in the NCDOT right of way manual. The CMAQ funding is administered through the NCDOT and the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO). Compliance with the Uniform Act, administered through the NCDOT, may have an impact on the acquisition schedule due to additional oversight and review of the acquisition process for compliance by NCDOT.

Attachment

PowerPoint Presentation

Durham Open Space and Trails Commission Resolution (12/18/13)